IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.75 OF 2007

IN

SUIT NO.2035 OF 2003

1.Singha Communications Pvt.Ltd.
2.Priya Ruth Paul .. Petitioners.

Versus

Crossover Films India Pvt. Ltd. & Ors. .. Respondents.

Mr.Sandeep Marne i/b.Media Lexicon for petitioners.
Ms.Saumya Srikrishna i/b.DSK Legal for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th September, 2007.

P.C.:

1. Heard Mr.Marne, appearing for the petitioner and Ms.Srikrishna, appearing for the respondents.

2. The contempt petition is filed by the original defendants in Suit No.2035 of 2003. That suit was filed by the first respondent, seeking specific performance of the Agreement dated 30th November, 2002, executed between

the petitioner No.1 and the respondent No.1. There was an alternate prayer for payment of amount of Rs.1.62 crores alongwith interest. A Notice of Motion, being Notice of Motion No.1955 of 2003 was moved in the said suit and at the hearing of the same, a consent formula was worked out, which was incorporated in writing and tendered in Court. Thus, the consent terms were filed in the said Notice of Motion. The consent terms with the specific obligations read thus :-

> "1. Agreed, declared and ordered that it shall be the liability and responsibility of the Plaintiff to settle and/or discharge and pay the outstandings and/or liabilities in respect of the suit picture "The Perfect Husband" amounting to Rs.29,11,786/- (Rupees twenty nine lakhs eleven thousand seven hundred eighty six only) as detailed in the statement annexed hereto and marked as Annexure "1" in such manner and/or on such terms and conditions as the Plaintiff may deem fit and the Defendants shall not be liable or responsible for the same nor it should affect the release of the said picture. It is clarified that the Plaintiff has the right to negotiate with the creditors the amounts payable to them and in the

event of any settlement with the creditors the amount of Rs.29,11,786/- will stand reduced in view of the settlement and the liability of Rs.29,11,786/- will reduce accordingly.

2. Agreed and declared that the Plaintiff will pay and/or provide to the Defendants and/or a sum of Rs.3,81,894/- (Rupees three lakhs eighty one thousand eight hundred ninety four only) as per details given in Annexure "2" hereto, being the personal expenses spent by the Defendants in respect of the suit picture on execution hereof and further sum of Rs.20,85,434/- (Rupees twenty lakhs eighty five thousand four hundred thirty four only) approximately being the tentative budget, as per details given in Annexure "3" hereto, as and when required for completion and marketing of the suit picture including expenses for travelling of Defendant No.2 for the said purpose so that the suit picture could be completed and made ready for release. However, it is agreed and ordered that in case further amounts are required for marketing, promotion, publicity and/or completion and release of the suit picture over and above the said sum of Rs.20,85,434/-

(Rupees twenty five lakhs eighty five thousand four hundred thirty four only), the same shall be provided and paid by the Plaintiff.

3. Agreed and declared that the expenses to the extent of Rs.10,00,000/- (Rupees ten lakhs only) required by Defendant No.2 for travelling and marketing of the suit picture initially will be borne and provided by the Plaintiff and same would be recouped by the Plaintiff from the amounts over and above the M.G. amount receivable from M/s.Eros Multimedia Pvt.Ltd. with whom terms of the Agreement have to be settled and agreement is to be entered into.

4. Agreed, declared and ordered that the earlier Agreement (undated) with M/s.Eros Multimedia Pvt.Ltd. has stood cancelled and the Plaintiff and the Defendants would enter into fresh Agreement for appropriate consideration on the Minimum Guarantee Amount basis as may be agreed with M/s.Eros Multimedia Pvt.Ltd. the Respondent herein on the terms which are set out in the draft Agreement a copy whereof is annexed hereto as Annexure "4" and the conditions

mentioned therein.

6. The Plaintiff and the Defendants have entered into an Agreement for theatrical rights with 20th Century Fox Corp.(India) Pvt. Ltd. for Indian territories, a copy whereof is annexed hereto as Annexure "5".

8. The marketing of the said picture and strategies and/or programme for said purpose will be worked out and implemented by Defendant No.2, who shall prior thereto handover the entire programme and the concept in writing of Mr.S.Chander of the Plaintiff for his written approval and thereafter same will be implemented by Defendant No.2."

3. Subsequently, it is urged that in pursuance of these terms, a sum of Rs.10.00 lacs was received by the respondent No.1 from M/s.Eros Multimedia Pvt.Ltd. as signing amount and further sum of Rs.5.00 lacs was to be deposited in the Escrow account opened by the respondent No.1.

4. There were certain distribution rights, which were

also in writing. The grievance of the petitioners is that the release date of the picture was fixed by M/s.Eros Multimedia Pvt.Ltd. in overseas circuit and Indian territories by another distributor and, thereafter, a letter dated 24th August, 2004 was addressed by the respondent No.1, instructing laboratory not to deliver the prints of the suit picture to the distributors. The series of letters followed and, thereafter, a Notice of Motion bearing No.2772 of 2004 was moved for passing a decree in terms of the consent terms, which relief was granted by this Court on 19th January, 2007.

5. Mr.Marne, appearing for the defendants submits that if at all there was an arrangement by consent and the same was recorded in writing and tendered in Court on the initial occasion, there is no doubt that this arrangement between parties was approved and the seal of approval of this Court is dated 19th January, 2007. Thus, the original consent terms, tendered by the petitioners were taken on record, an order made in terms thereof and the suit was decreed and disposed of accordingly. He submits that breach and violation of a decree or breach of an undertaking, is a "civil contempt" within the meaning of Section 2(b) of the Contempt of Courts Act, 1971. In this behalf, he relies upon a decision of the Hon’ble Supreme

Court reported in **(2006) 11 S.C.C. in the case of Rama Narang v/s. Ramesh Narang & Anr.** It is submitted by Mr.Marne that after the order dated 19th January, 2007, a letter was addressed to the 1st respondent, pointing out its obligations and requesting it to comply with the same, failing which, the petitioners would institute appropriate proceedings. Mr.Marne submits that all that was responded to in writing by the Advocate of the 1st respondent is that the Advocate would look into the matter after taking instructions. He submits that the film could not be released. All agreements and arrangements were aimed at release of the film. This being the position, it is a clear case of wilful and deliberate breach of a decree in terms of the consent terms and, therefore, this Court should take appropriate action in accordance with law.

6. Ms.Srikrishna, while not disputing that the breach and violation of a decree of a Court intends of violation or breach of an undertaking would constitute civil contempt, submits that in the facts and circumstances of the present case, the question is regarding reciprocal arrangement and the obligations of parties. It is not as if the respondents alone were to comply with the certain terms. A compliance is also to be made by the petitioners. She submits that the petitioners are the

original defendants. The respondent No.1 is the original plaintiff in the suit. The original defendant has now come forward and in the garb of filing a contempt petition, seeks execution and enforcement of the obligations of the respondents under the consent terms, which is impermissible in law.

7. In any event and even without prejudice she submits that this Court would have to go into and consider the respective obligations. The decree will have to be interpreted and that course is also impermissible in contempt jurisdiction.

8. Having perused the petition and the annexures thereto, including the terms, I have no doubt in my mind that this case is distinguishable from the facts, which were before the Hon'ble Supreme Court. In the case of **Rama Narang (supra)** before the Hon'ble Supreme Court, the orders passed by the Court in contempt petitions were subject matter of the proceedings before Supreme Court. The family members settled their suits and counter suits and terms were recorded. Minutes of the consent order were filed and this Court was called upon to pass an order in terms of the Minutes of the Consent Order. After recording the Minutes of Consent Order, putting an end to

all disputes, the proceedings were sought to be withdrawn. All proceedings were disposed of and clauses 3(c), (d) and (f) of the consent minutes had been violated. These clauses were noticed by the Hon'ble Supreme Court and, thereafter, the argument that the contempt petition is not maintainable, had been considered by the Hon'ble Supreme Court and after noticing the entire case law in the field, the Court had observed that for a civil contempt, it is not necessary that there must be an undertaking to the Court. A decree or order by the Court can be made subject matter of a petition alleging civil contempt and that is how in paragraph 22, the Hon'ble Supreme Court referred to the certain settled principles and in paragraph 24 of its judgement delivered in the case of **Rama Narang (supra)**, it observes thus : -

> "24. All decrees and orders are executable under the Code of Civil Procedure. Consent decrees or orders are of course also executable, but merely because an order or decree is executable, would not take away the court's jurisdiction to deal with a matter under the Act provided the court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment under Section 13 of the

Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice. The decisions relied upon by the respondents themselves hold so as we shall subsequently see."

9. The Hon'ble Supreme Court, therefore, distinguished the earlier decision in the case of **Babu Ram Gupta** and in paragraph 33, this is what is stated :-

"33. In the present case, the consent terms arrived at between the parties were incorporated in the orders passed by the Court on 12-12-2001 and 08-01-2002. The decree as drawn up shows that order dated 08-01-2002 was to be "punctually observed and carried into execution by all concerned." A violation of the terms of the consent order would amount to a violation of the Court's orders dated 12-12-2001 and 08-01-2002 and, therefore, be punishable under the first limb of Section 2(b) of the Contempt of Courts Act, 1971. The question whether the respondents should not be held guilty of contempt because of any earlier confusion in the law reflected in Babu Ram Gupta case is a question which must be left for

> decision while disposing of the contempt petition on merits. It may be argued as an extenuating or mitigating factor once the respondents are held guilty of contempt. The submission does not pertain to the maintainability of the petition for contempt. The preliminary objection raised by the respondents regarding the non-maintainability of the petition for contempt is, for the reasons stated, dismissed."

10. It is in these circumstances that the law has been laid down by the Hon'ble Supreme Court but ultimately whether there is a breach or violation of the terms of the consent order, has to be decided in the facts and circumstances of each case. Merely because consent terms are tendered and order is made in terms thereof does not mean that a petition alleging civil contempt is necessarily to be allowed. The terms and the obligations so also the effect thereof has to be noticed in each case while it is true that the consent order and consent decree is also capable of being breached and violated, its breach and violation could be made foundation of civil contempt, yet, facts in each case would have to be noticed while applying the above principles. The Hon'ble Supreme Court has not observed that in every case of civil contempt it

must be held that there is a civil contempt. In the present case it has been rightly pointed by Ms.Srikrishna that the clauses impose reciprocal obligations. While there is merit in the submission that the defendants cannot be relieved of their obligations, the contempt petition cannot be thrown out on this ground.

11. Perusing the consent terms with the able assistance of both sides and noticing the obligations therein, to my mind, this is not a case where it can be said that the respondents have deliberately breached and violated the order passed in terms of the consent terms. They have been called upon by the petitioners to comply with their obligations and there is substance in the contention that the annexure to the letter dated 24th January, 2007, is prima facie non compliance with clause 8 of the consent terms by the petitioners before me. As to what are the reciprocal obligations and what would be their effect on the rights of the parties, is something which is incapable of being decided in contempt jurisdiction. That would require the terms to be interpreted, which course also is not possible in the peculiar facts and circumstances of the present case.

12. In my view, therefore, there is substance in the

contention that the contempt petition is not the remedy for the petitioner to enforce the consent order and the terms arrived at by consent between parties Leaving open all remedies so also the rival contentions therein, the present contempt petition is disposed of. No costs.

(S.C.Dharmadhikari, J.)